

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS M HIGH
Claimant

APPEAL 19A-UI-07338-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GO DADDY SOFTWARE INC
Employer

**OC: 08/04/19
Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Go Daddy Software (employer) appealed a representative's September 6, 2019 decision (reference 01) that concluded Thomas High (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 8, 2019. The claimant participated personally and through his wife, Therese Knight. The employer participated by Jamie Pettigrew, Operations Manager, and Kris Meyer, Employee Relations Specialist. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 10, 2011, as a full-time supervisor. The employer had a handbook containing its policies. It did not issue the claimant any warnings during his employment.

In February 2019, the claimant called one of his team members outside of work time for time card approval. The employee was moving to another department. The claimant gave the employee words of encouragement. He told the employee to keep his head down and opinions to himself as he started the new job.

One of the claimant's team member's had a daughter who was terminally ill. More than once, she encouraged the claimant to have his church members pray for her daughter. At some point, the claimant disciplined her for "leading with a discount". The employee complained to the employer that the claimant was discussing religion at work and it made her feel uncomfortable.

The claimant was on medical leave for back surgery from June 10 to July 5, 2019. The week before he left the claimant and operations manager discussed a low scoring member of the

claimant's team. The two listened to the team member's call and each scored the call differently. The claimant and his supervisor talked about the variable. The team member with the low score complained to the human resources department about the claimant while he was on medical leave.

The claimant returned to work after his medical leave. On July 11, 2019, the employer had an offsite event that the claimant and his wife attended at a lake with other employees. Employees were reminded to put on sunscreen. The claimant reminded a co-worker that she was sunburned at the outing the previous year and she should get help putting on sunscreen if she needed it.

During the week ending July 12, 2019, the claimant had to terminate a team member for time card fraud. She went to the employer and complained about the claimant's inappropriate behavior. On July 12, 2019, the employer placed the claimant on paid administrative leave. The claimant was unsure of why.

The employer investigated the claimant and questioned employees. The claimant forgot that he called the employee outside of work hours and denied doing so in the investigation. Later, he looked at his telephone log, saw the call, and tried to correct the record of the investigation. The employer told him it was too late. On August 9, 2019, the employer terminated the claimant for unprofessional behavior on unknown dates. He scored direct report calls lower than warranted after employees complained about him. The claimant denied offering to put sunscreen on a peer or calling a subordinate outside of work hours. Lastly, the claimant discussed religion with a subordinate.

The claimant filed for unemployment insurance benefits with an effective date of August 4, 2019. He received \$3,815.00 in benefits after the separation from employment. The employer did not provide the name and number of a person who would participate in the fact-finding interview on September 5, 2019. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's September 6, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs